

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
The Development of a National Framework to)	RM-9474
Detect and Deter Backsliding to Ensure)	
Continued Bell Operating Company Compliance)	
With Section 271 of the Communications Act)	
Once In-Region InterLATA Relief Is Obtained)	

**MOTION OF AMERITECH TO ACCEPT
LATE-FILED PLEADING**

Ameritech respectfully files this Motion to accept the attached late-filed pleading in the above-captioned matter. Despite the best efforts and diligence of all Ameritech personnel associated with the drafting, preparation and handling of Ameritech's Comments in this proceeding, and although the local courier service engaged to deliver this pleading arrived at the Clerk's office before it had closed for the day's business, it was not permitted to file the pleading because there was a line..


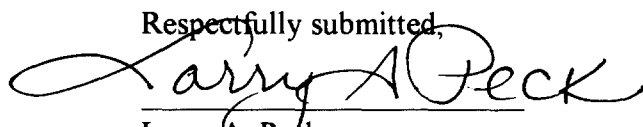
Copies of the pleading have already been duly served on the party to the proceeding, as attested to by the attached Affidavit of Service required by the Commission's rules. Moreover, the pleading is filed before Ameritech received any Comments filed by any other party. Thus, no party may rightfully claim that its rights or interests have been prejudiced by the filing of these Comments on the day after the date set by the Commission for their filing.

For these reasons, Ameritech requests that its Comments be accorded full consideration as if timely filed with the Commission.

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Respectfully submitted,



Larry A. Peck

Attorney for Ameritech

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Dated: March 9, 1999

[Lap0248motion]

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COMMENTS OF AMERITECH

Ameritech opposes the Petition filed by Allegiance in this matter. Although Ameritech agrees that an on-going measurement and performance plan for competitive checklist requirements is a vital part of in-region, interLATA authorization, Allegiance's proposal to establish yet another proceeding to examine that issue is unnecessary and redundant.

Allegiance seeks three actions from the Commission. First, it asks that the Commission institute a proceeding to mandate national measurements of Bell operating company ("BOC") performance of each item required by Section 271((c)(3)(B) of the Telecommunications Act of 1996 ("competitive checklist") for in-region, interLATA relief. These measurements would be used to determine if a BOC meets the competitive checklist, and to ensure that its performance does not "backslide" after it has gained in-region, interLATA authorization. Second, Allegiance proposes that the Commission adopt accelerated procedures for handling complaints regarding BOC provision of the competitive checklist. Third, Allegiance requests that the Commission adopt three-tiered sanctions in the event that a BOC fails to meet its competitive checklist commitments.

Each of the proposals made by Allegiance has been addressed either in the Telecommunications Act of 1996, or in other Commission proceedings. In fact, as will be discussed, in several respects Allegiance's proposal conflicts with the Telecommunications Act of 1996, and Commission decisions. Allegiance raises no new argument or evidence that should cause the Commission to change course, or to institute yet another performance measurement proceeding.

1. Measurement of Performance Is Addressed In Other Commission Proceedings.

Performance measurement has already been addressed in detail by the industry in the Commission's Performance Measurement Docket.¹ That Docket is comprehensive and incorporates, among other items, the competitive checklist. Allegiance raises the same old tired arguments and groundless concerns that were previously refuted in the Performance Measurement Docket. There is no reason to re-argue them in yet another proceeding.

Section 271((c)(2)(B) of the Telecommunications Act of 1996 imposes the so-called "competitive checklist" as a condition of BOC in-region, interLATA authorization. The section requires that "access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of [the competitive checklist]. . . ." Allegiance frets that once a BOC has obtained in-region, interLATA authorization, it will "backslide" on its performance of the competitive checklist. As a result, Allegiance asks that the Commission institute a

¹ Petition of LCI and CompTel for Expedited Rulemaking To Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems, CC Docket No. 98-56, RM 9101 ("Performance Measurement Docket").

proceeding to develop national performance measures for the competitive checklist items. However, what Allegiance seeks already exists.

Not only is there still no evidence that BOCs will wantonly disregard their competitive checklist obligations, but the measurements already provided by Ameritech and other BOCs are more than adequate to detect any alleged backsliding. In fact, since 1997, Ameritech has produced comprehensive performance measurement reports that include competitive checklist items. Ameritech detailed its performance measurements in the Performance Measurement Docket.² Moreover, many of these measurements are required by existing interconnection agreements that Ameritech has entered into with competitive LECs. In most respects, Ameritech's measurements meet or exceed the proposals made by the Commission in the Performance Measurement Docket.³

Equally as important, the Commission is addressing performance measurement in its orders in the BOC proceedings seeking in-region, interLATA authorization.⁴ The Commission's orders in there proceedings provide the necessary guidance on competitive checklist performance that Allegiance seeks. In fact, just last month Lawrence E. Strickling, Chief of the Common Carrier Bureau, sent a letter to BellSouth specifying in detail the flow-through, TSFI integration, and retail analogues/performance

² Ameritech's Initial Comments In Response to Notice of Proposed Rulemaking, filed on June 1, 1998, and its Reply Comments in Response to Notice of Proposed Rulemaking filed on July 6, 1998.

³ For example, the optional call completion reports produced by Ameritech each month exceed the minimum trunk blockage reports proposed by the Commission. The call completion measurement reports the percentage of calls actually completed for Ameritech and each carrier, rather than merely providing trunk blockage levels.

⁴ See, for example, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, released August 19, 1997 paras. 133 to 221.

standards/statistical measurements, complex ordering/partial migration orders, and third-party testing requirements on BOCs.⁵

There is no gap regarding checklist performance measurement that needs to be filled, nor is there a need for yet another proceeding to further complicate and drag out an already unduly cumbersome and rigorous process.

2. The Commission Has Addressed Procedures For Handling Checklist Compliance Complaints.

Section 271(d)(6)(B) of the Telecommunications Act of 1996 requires that the Commission establish “procedures” to review complaints concerning continued compliance with Section 271(d)(3) of the Telecommunications Act of 1996, including the competitive checklist. In response to this statutory requirement, the Commission specified the process applicable to competitive checklist compliance complaints, and rejected proposals (similar to the one now being made by Allegiance) seeking separate procedural rules for those complaints. At paragraph 283 of its Complaint Procedure Docket Order, the Commission explained that:

[w]e need not address this issue [checklist complaint procedures] in this Report and Order. We recognize the importance that Congress assigned to the resolution of complaints alleging violations of the competitive checklist requirements as reflected in the ninety-day “act on” requirement. We fully intend to act promptly on all matters pertaining to those requirements to assure that full effect is given to the competitive goals underlying Section 271 of the Act.⁶

Thus, the Commission has unequivocally stated its commitment to act expeditiously on competitive checklist compliance complaints. But, the Commission’s decision wisely

⁵ Attachment A.

⁶ Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Carriers, CC Docket 96-238, Report and Order, released November 25, 1997 (“Complaint Procedure Order”).

provides the flexibility necessary to facilitate expeditious resolution of these complaints based upon their individual circumstances.

Moreover, in order to facilitate timely review of competitive checklist complaints, the Commission adopted Rule 1.736 [47 CFR 1.736] requiring that unless the parties agree otherwise, the Commission will act on competitive checklist complaints within “ninety days.” The rule carefully limits the ability to waive that requirement to the parties. Thus, contrary to Allegiance’s allegations, the procedures applicable to competitive checklist complaints have been addressed by the Commission.

At page 23 of its Petition, Allegiance asks that the Commission adopt rules for competitive checklist complaints that are comparable to the Commission’s Accelerated Docket Rules. (47 CFR 1.730 to 1.735.). However, there is no need to implement a proceeding making the Accelerated Docket Rules available to competitive checklist complaints since, in applicable cases, those rules are already available. In fact, the purpose of the Accelerated Docket Rules is to expeditiously resolve competitive complaints. Confirming this objective, the Commission found that the “accelerated nature of the proceedings proposed in the Public Notice will do much to stimulate the growth of competition for telecommunications services by ensuring the prompt resolution of disputes that may arise between market participants.” The Commission explained that “[w]e recognize that even minor delays or restrictions in the interconnection process can represent a serious and damaging business impediment to competitive market entrants.”⁷ The Commission also noted that the “Accelerated Docket will provide the incumbent

⁷ Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Carriers, CC Docket 96-238, Second Report and Order, released July 9, 1998 (Accelerated Docket Order”) at para. 3.

carriers with a means of obtaining the expedited disposition of certain complaints filed against them. This might be particularly important, for example, when a regional Bell operating company (“BOC”) seeks approval under section 271 to provide in-region interLATA service.”⁸ (Footnote omitted.)

3. The Telecommunications Act Prescribes Remedies For BOC Failure To Continue To Meet In-Region, InterLATA Requirements.

Finally, Allegiance tries to create an issue with respect to remedies for failure to continue to meet checklist requirements. Once again, Allegiance’s request for Commission action is unnecessary. Section 271(d)(6)(A) of the Telecommunications Act of 1996 specifies the Commission’s “authority” in this area, and the remedies it shall impose. The section is comprehensive and explicit.

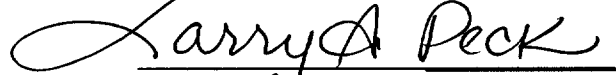
Section 271(d)(6)(A) specifies three actions the Commission may take in the event that a BOC fails to continue to meet the requirements of the Section 271(d)(3). First, the Commission may “issue an order to such company to correct the deficiency”. Second, the Commission may then “impose a penalty on such company pursuant to Title V”. Third, it may next “suspend or revoke such approval”. The Commission’s power to enforce compliance with the competitive checklist and to remedies for “backsliding” is clear. Moreover, the powers granted to the Commission are so onerous and extensive that they provide the deterrent that Allegiance claims it seeks. There is no reason for any proceeding on remedies.

⁸ *Id.* at para. 11.

4. Conclusion.

Since all the issues raised in Allegiance's Petition are addressed elsewhere, it should be dismissed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Larry A. Peck". The signature is written in black ink and is positioned above a horizontal line.

John Lenahan

Larry A. Peck

Counsel for Ameritech

Room 4H86

2000 West Ameritech Center Drive

Hoffman Estates, IL 60196-1025

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Dated: March 8, 1999

Attachment A



Federal Communications Commission
Washington, D.C. 20554

February 10, 1999

Mr. Sid Boren
Executive Staff Officer
BellSouth Corporation
1155 Peachtree St., N.E., Room 2004
Atlanta, GA 30309

Dear Mr. Boren:

On December 15, 1998, members of the Common Carrier Bureau Staff ("Bureau Staff") met with representatives of BellSouth to discuss interpretations of the Commission's October 13, 1998, BellSouth Louisiana II Order as it might be applied in other states in which section 271 applications might be filed.¹ A summary of the discussion is described below. The Bureau Staff indicated that additional information from BellSouth and interested parties would be useful in order for the Bureau Staff to engage in further discussion. The Bureau Staff also indicated that its views were based on information developed since the issuance of the BellSouth Louisiana II order. The Bureau Staff stated that its views on any of these issues were in no way binding on the Commission, and that no conclusive determination could be made outside the context of an actual Section 271 application and record.

1. Flow-Through.

Issue. Whether BellSouth can exclude complex orders from its flow-through calculations and what level of disaggregation of flow-through is necessary to demonstrate nondiscriminatory access.

Bureau Staff Response The Bureau Staff stated its view that, in principle, complex orders that are manually processed for BellSouth's retail customers could be excluded from flow-through calculations. The Bureau Staff also stated its view that, to the extent BellSouth excludes complex orders from its flow-through calculations, the following information should accompany a future Section 271 application: (1) a clear definition of complex orders for CLECs and BellSouth; (2) a demonstration of how BellSouth handles complex orders for its retail customers and CLECs; (3) evidence that complex orders are processed in a nondiscriminatory manner (i.e., performance results and analysis).

¹ Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (BellSouth Louisiana II 271 Order).

The Bureau Staff also stated its view that BellSouth could exclude from its flow-through calculation orders submitted by CLECs that contained CLEC-caused errors. The Bureau Staff stated its view that the flow-through calculation could be adjusted to exclude CLEC errors, if, in a future Section 271 application, BellSouth (1) defines more clearly what constitutes a CLEC error, and (2) verifies the cause of the errors as being CLEC errors (e.g., through an independent audit).

In response to questions about the appropriate level of disaggregation the Bureau Staff indicated its view that the proposed levels of disaggregation listed in the *OSS Model Rules NPRM*² were appropriate.

2. TAFI Integration

Issue. (1) Whether BellSouth must provide a machine-to-machine repair and maintenance interface in order to meet the nondiscrimination requirement. (2) Absent a machine-to-machine repair and maintenance interface, what evidence is necessary to demonstrate nondiscriminatory access.

Bureau Staff Response The Bureau Staff stated its view that it did not believe that machine-to-machine repair and maintenance interface is *per se* required. The Bureau Staff noted that the Louisiana II Order found that a lack of machine-to-machine interface for repair and maintenance was not *per se* discriminatory. The Bureau Staff stated its view that, absent a machine-to-machine repair and maintenance interface, BellSouth must demonstrate that the interfaces offered to CLECs provide nondiscriminatory access. The Bureau Staff also stated that additional information was needed to assess the competitive impact that results from a lack of a machine-to-machine interface for repair and maintenance. In order to obtain such information, the Bureau Staff indicated that it would schedule additional meetings with interested parties.

The Bureau Staff stated its view that the following information would assist in evaluating in a future application whether BellSouth's repair and maintenance interface provide nondiscriminatory access: (1) a detailed description of the systems and functionality BellSouth utilizes itself for both designed and nondesigned services; (2) a detailed description of the systems and functionality BellSouth offers to competing carriers; (3) a discussion of what interface functionality competing carriers have requested through the change control process and the status of such request, if any; and (4) performance results for resold services and UNEs by interface type.

² See *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-46, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (1998).

3. Retail Analogues/Performance Standards/Statistical Measurements.

Issue. Methods of evaluating whether BellSouth's OSS performance meets the nondiscrimination requirement.

Bureau Staff Response The Bureau Staff asked BellSouth to propose a framework for evaluating whether it is providing nondiscriminatory access to OSS functions and suggested that BellSouth include the following criteria:

- Relevant performance measurements;
- Identification of retail analogues, including level of disaggregation;
- Identification of a benchmark or performance standard where no retail analogue exists (e.g., based on state approved intervals, engineering studies, or other standards);
- A statistical methodology which is used to compare actual performance results to retail analogues or benchmarks;
- A threshold for determining whether differences in performance are competitively significant and whether analysis of the underlying cause for the difference is needed;
- An open process for analyzing the underlying cause for differences of performance;
- Meaningful penalty amounts to prevent "backsliding."

The Bureau Staff also indicated that it would seek industry comment of any framework for evaluating OSS performance proposed by BellSouth.

4. Complex Ordering/Partial Migration Orders.

Issue. Whether partial migration and directory listing need to be ordered electronically.

Bureau Staff Response The Bureau Staff stated its view that there is no retail analog for partial migration orders, and that electronic ordering capability is not required at this time. The Bureau Staff stated its view that BellSouth must demonstrate that the ordering process for complex/partial migration orders meets the nondiscrimination requirement (e.g., provides an efficient competitor a meaningful opportunity to compete). The Bureau Staff also stated its

view that BellSouth should continue upgrading its OSS ordering interface through the change control process.

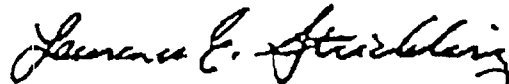
5. Third-Party Testing -- Demonstration of Operational Readiness.

Issue In cases where there is little or no commercial usage of an interface, whether BellSouth must engage in third-party testing at the level implemented by Bell Atlantic in New York.

Bureau Staff Response The Bureau Staff noted that, in its view, internal testing cannot overcome evidence from commercial usage demonstrating inferior service to CLECs. The Bureau Staff stated its view that, where there is no commercial usage or inconclusive commercial usage exists, some form of testing is necessary to demonstrate that the BOC's OSS is operationally ready. The Bureau Staff indicated its view that, while it could not conclude, in the absence of a factual record, whether some forms of internal testing or carrier to carrier testing could demonstrate operational readiness, a third party test would serve as a reasonable "safe harbor." The Bureau Staff noted as two examples of such tests underway in New York and Texas. The Bureau Staff stressed the importance, in its view, of a test plan that included input from interested parties and includes meaningful independent review (e.g., State Commission oversight).

For information purposes, a copy of this letter will be placed in all open section 271 dockets.

Sincerely,



Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission

cc: Ms. Magalie Roman Salas
Secretary
Federal Communications Commission

CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the Comments of Ameritech has been served on the party listed on the attached service list, via first class mail, postage prepaid, on this 8th day of March, 1999.

By: 
Grace Germain

* Served via hand delivery

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